# Department of Justice

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**DEPARTMENT OF JUSTICE ANTITRUST DIVISION ISSUES STATEMENT ON THE CLOSING OF ITS INVESTIGATION OF ANTHEM, INC.'S ACQUISITION OF WELLPOINT HEALTH NETWORKS, INC.**

***Investigation Focused on Whether Merger Between Two Blue Cross Plans Would Create Market or Monopsony Power***

WASHINGTON, D.C. **–** The Deparment of Justice Antitrust Division issued the following statement today after the Department announced the closing of its investigation into Anthem, Inc.'s proposed acquisition of WellPoint Health Networks, Inc.:

"The facts did not support a conclusion that this merger will give a combined Anthem/WellPoint market or monopsony power in any market in which they compete. WellPoint's share in the markets in which they overlap is very small, and these companies are not particularly close competitors. Although this particular transaction should not threaten to harm competition or consumers, we will continue to be vigilant in our enforcement of the antitrust laws in this area."

(Background information is attached.)

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**DEPARTMENT OF JUSTICE ANTITRUST DIVISION STATEMENT ON THE CLOSING OF ITS INVESTIGATION OF ANTHEM, INC.'S ACQUISITION OF WELLPOINT HEALTH NETWORKS, INC.**

The Antitrust Division of the Department of Justice recently closed its investigation of Anthem, Inc.'s proposed acquisition of WellPoint Health Networks, Inc. Anthem and WellPoint are two of the largest health insurance companies in the country, and they are the two largest licensees of the Blue Cross Blue Shield Association. Anthem insures 12 million people as the Blues licensee in nine states (Colorado, Connecticut, Indiana, Kentucky, Maine, Nevada, New Hampshire, Ohio, and Virginia). WellPoint insures 14 million people as the Blues licensee in four states (California, Georgia, Missouri, and Wisconsin). Under their agreement, Anthem would acquire WellPoint for $16.4 billion in cash and stock. The combined entity would become the largest managed care insurance company in the country.

The Antitrust Division began investigating the proposed transaction when it was publicly announced in October 2003. The Division has obtained extensive information from Anthem and WellPoint and interviewed numerous industry participants, including physicians, hospital representatives, employers, and other managed care plans.

The Division's review focused on potential effects in four separate areas.

First, the Division examined the extent to which Anthem and WellPoint compete for the sale of health insurance products. Anthem and Wellpoint do not compete against each other under the Blues trademarks. Blue Cross assigns specific geographic territories to each licensee, prohibiting a licensee's use of the Blues Marks outside its territories. However, in each of the nine states in which Anthem is a Blues licensee, Anthem does compete with two WellPoint subsidiaries, which sell health insurance plans and provider network services under Wellpoint's "UniCare" and "HealthLink" brands.

WellPoint's market share in each of these nine states is very small. Furthermore, the information obtained from employers and other market participants indicate that neither UniCare nor HealthLink is a close competitor to Anthem in any of these states. Given these facts, the Division concluded that this transaction would not enhance Anthem's ability to increase prices, reduce quality, or otherwise reduce consumer welfare in any of these markets.

Second, the Division considered the possibility that this transaction could give a combined Anthem/WellPoint buyer-side market power (monopsony power) over health care providers.

Both Anthem and WellPoint purchase physician and hospital services in the nine overlap states. The Division found, however, that WellPoint's market shares in these states are very low, such that Anthem's share of the revenue earned by hospitals and physicians in these markets would increase by a very small amount as a result of the merger. Therefore, it is very unlikely that the merger would enhance Anthem's ability to profitably lower compensation levels to providers. Hospitals and physicians in these markets, while expressing a general concern about the trend toward consolidation in the managed care insurance industry, largely agreed that this transaction did not raise specific competitive concerns.

Third, despite the fact that Anthem and Wellpoint do not directly compete in contracting with hospitals, physicians, and other healthcare providers in Blues plans, the Division examined whether the combination of their complementary plans might increase their incentives or ability to exercise monopsony power. In particular, the Division explored whether the merged firm was more likely to impose contractual clauses that might raise competitive concerns, such as "most favored nations" clauses, in their contracts with hospitals. The Division did not find any significant indication that the merger was likely to have this result. Moreover, the Division retains the ability to examine and, if warranted, challenge the imposition of such arrangements in the future.

Fourth, the Division considered possible effects of this deal on the acquisition of Blues plans. In the past 10 years, several Blues plans have converted from non-profit to for-profit status, either independently or as part of an affiliation with another for-profit Blues plan. As a result of consolidation, there now are only three publicly traded, for-profit licensees – Anthem, WellPoint, and WellChoice, the Blues licensee for the metropolitan New York City area. And Blues licensing restrictions effectively prevent a Blues plan from being acquired by any non-Blues entity.

To the extent competition for the acquisition of Blues plans is reduced, the purchase prices of for-profit plans sold in the future might decrease, to the detriment of the plans' shareholders, which would include private charitable health care foundations. Lower purchase prices could reduce the charitable funds available for uninsured and indigent medical care.

The Division could not predict that such competitive harm would result in the foreseeable future, if at all, and therefore concluded this theory did not support a challenge to the transaction. In the Division's investigation, no non-profit Blues plans that might convert to for-profit and be sold in the foreseeable future could be identified. Anthem and WellPoint, themselves for-profit plans, can only buy other for-profit Blues. WellChoice is the only other for-profit plan, and Premera (a Blues licensee in the Pacific Northwest), is currently attempting to convert. Both WellChoice and Premera have publicly stated they intend to remain independent. Many other Blues plans are committed to remaining non-profit entities, and the current political and regulatory climate is hostile to for-profit conversions. Given the uncertainty about when or whether there might be any harm, the Division decided that it was unlikely that this transaction would result in substantial competitive harm in the foreseeable future.

The Division provides this statement pursuant to its policy on the issuance of investigation closing guidance, available at http://www.usdoj.gov/atr/public/guidelines/201888.htm. This discussion is limited by the Division's obligation to protect the confidentiality of certain information obtained in its investigations. As in most of its investigations, the Division's evaluation has been highly fact-specific, and many of the relevant underlying facts are not public. Consequently, readers should not draw overly broad conclusions regarding how the Division is likely in the future to analyze other collaborations or activities, or transactions involving particular firms. This statement does not bind the Division in any future enforcement action.